



**MODINE**

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July 10, 1998

Christine M. Kump  
Environmental Engineer  
Missouri Department of Natural Resources  
Permits Section  
P.O. Box 176  
Jefferson City, MO 65102-0176

Dear Ms. Kump:

Enclosed are the Modine Manufacturing Company preliminary comments on the *Draft Corrective Action Abatement Order on Consent, Modine Manufacturing Company, 179 Sunset Drive, P.O. Box 636, Camden County, Missouri* dated April 30, 1998. If you have any further questions on this matter, please contact me at (414) 636-1649 or at the letterhead address.

Sincerely,

Thomas S. Sanicola  
Environmental Engineer

cc: R. Hentges - M DNR  
B. Pedicino - US EPA Region VII  
J. Bindbeutel - Attorney General's Office  
S. Woods - Attorney General's Office  
file(2)

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RCRA RECORDS CENTER



**Modine Manufacturing Company Comments to the**  
**Draft Corrective Action Abatement Order on Consent,**  
**Modine Manufacturing Company,**  
**179 Sunset Drive, P.O. Box 636, Camden County, Missouri**  
**Dated April 30, 1998**

- page 1, para. 2        Add to the definition of AOC the text “any area under exclusive control or ownership of Modine.” Replace “is determined by the Department” with “by analysis or other acceptable means”.
- page 1, para. 5        Add to the definition of Facility the text “any area under exclusive control or ownership of Modine.”
- page 1                A definition of “Day” needs to be included in the text. Day shall mean a calendar day unless expressly stated to be a business day. ‘Business day’ shall mean a day other than Saturday, Sunday or Federal holiday. In computing any period of time under this order, where the last day would fall on a Saturday, Sunday or Federal holiday, the period shall run until the end of the next business day.
- page 2                A definition of “Interim Measures” needs to be included in the text. ‘Interim Measures’ or ‘IM’ shall mean those actions which can be initiated before implementation of the final corrective action for a Facility to achieve the goal of stabilization as set forth in paragraphs 71-73 of this Order.
- page 2, para. 13       Add after the text “(RFI)” in line 4 “consistent with the RFI Scope of Work attached in Appendix \_\_\_\_.” Sections (3) and (4) should be struck.
- page 3, para. 20       Replace “1974” with “1972” for date of acquisition.
- page 4, para. 21       Replace “100 acres” with “67 acres”. Add the text “and is zoned industrial” after “acres”.
- page 4, para. 22       Replace “2.5 miles” with “2.5 to 4.5 miles”.
- page 5, para. 28       Strike the language “as actual or potential sources of releases of hazardous waste or hazardous constituents to the environment” after “(AOC’s)” in line 5.
- page 5, para. 31       The risk assessment was suggested and requested by Modine. The Department agreed at the time that this would be adequate for closure.

page 6, para. 37

Strike "voluntary".

On test, TCE levels were non-detect and below the 5 ppb MCL."

page 6, para. 40

Strike "voluntary". Also strike "as high as" language and replace it with "up to" or similar text.

page 7, para. 41

Strike "voluntary". Alternative wording such as "additional" should be used.

page 7, para. 42

The following text should be added at the end of the paragraph: "shown on the Facility map attached to this Order as Figure 2".

SWMU 1 - Hulett Lagoon

pages 7-8, para. 43-45

This section should be deleted from the Order.

page 8, para. 46

Add after "storm water" the text "(from 1979 to 1983, eliminated in 1983)", replace "approximately 10 feet west" with adjacent to". Remove Mudpit #2 from the sentence referencing copper cleaning line waste since no copper cleaning line waste was ever discharged into Mudpit #2. The Mudpit #2 piping was rerouted through the new treatment system (1985-86 time frame) and was never considered a "dedicated" line to the lagoon.

page 8, para. 47

Replace "mechanical room" with "main building".

page 8, para. 48

Replace "D011" with "D001" (silver with corrosive).

page 8-9, para. 49

Storage area #1 was never paved or used as a parking lot. Strike "as high as" after "TCE" and "beneath the Facility" after "contamination and before "are...". Boring referenced in the text is approximately 150-200 feet to the southwest of the unit. Last sentence of the text should also be struck.

page 9, para. 50

The 5,300 gallon TCE tank was for the storage of raw material solvent, not for TCE still bottoms (F001) storage. Containment around this tank also was greater than the surrounding pad. The last sentence of the paragraph should be struck.

page 9, para. 51

SWMU 31 was never used as a formal storage area for hazardous wastes. The main function of the area was to store old, obsolete equipment ready for scrapping. Wash-out water and soda ash from a degreaser cleanout (unknown TCE content) in drums was stored in the area for a limited time period. No waste TCE still bottoms (F001) or waste oil (D098) was stored in this area.

page 10, para. 53

1,1,1 Trichloroethane is repeated; one reference should be struck. Strike "beneath the Facility" from the last sentence.

page 10, para. 56 Add “no lead was used in the production processes at this facility.” Strike reference to “Superfund’s Soil Screening Levels (SSLs) for transfers to groundwater” and replace it with references to Missouri’s proposed CALM standards.

page 11, para. 57 Change “off-site of” to “of off-site”. Change “disposes” to “disposed of”. Strike the last sentence as speculation.

page 11, para. 58(F) Change “human health and the environment” to “human health or the environment”.

pages 12-15, para. 60-65

How is a newly-identified SWMU or AOC going to be determined? Is this similar to newly-identified releases from previously identified SWMUs or AOCs? This section may be struck due to the elimination and/or closure activities on-site. If this section is not struck, the following comments apply.

page 12, para. 60 How is this defined? Possibly strike section since an extensive evaluation has been conducted in the past (Jacobs report) and no new units have been created that handle hazardous wastes.

page 12, para. 61 Change “30 days” to “60 days”.

page 13, para. 65 Strike the first sentence. Replace with “If the Department determines that additional investigation is necessary, the Department will notify Modine in writing as to the nature of the additional investigation and the basis for its determination that the additional investigation is necessary. Within thirty (30) days after the receipt of such notice, Modine will have the opportunity to meet with the Department to discuss the additional investigation. If the parties agree as to the need for the additional investigation, the agreement shall be memorialized in writing and shall be considered a investigation plan modification in accordance with paragraph 156 of this Order.”

Add at the end of the paragraph; “If the parties are not able to agree upon the additional investigation, within sixty (60) days following the receipt of the Department’s Notice, Modine may dispute the Department’s determination of the need for the additional investigation by invoking the dispute resolution procedures under Section XVII - Dispute Resolution of this Order.”

page 14, para. 66 Add “newly-identified” before “release(s)” and after “any”. Add “if any such SWMU or AOC presents an immediate or potential threat to the environment.” Replace “15 days” with “30 days”.

page 14, para. 67 Change “30 days” to “60 days”.

page 15, para. 70 Strike reference to CMS.

page 15, para. 71 Change “24 hours” to “72 hours”.

- page 15, para. 72      Strike “or potential release” from the first sentence. Strike “The Department will determine the” and replace it with “Modine will propose and the Department will approve” after “can be implemented.” in line 6. Replace “action(s)” with “proposal(s)” in the last sentence.
- page 16, para. 73      Strike “should have known” from line 1. Change “10 days” to “15 business days”.
- page 16, para. 74      Add “an RFI” before “Work Plan” in line 1.
- page 16, para. 75      Add the date reference after “most recent version of the EPA guidance document”.
- page 17, para. 78      Add “The Department and Modine will attempt to reduce or eliminate the need for Supplemental RFI Work Plans”.
- page 17, para. 80      Add the date reference after “most recent version of the EPA guidance document”.
- page 17, para. 81      Strike “to enable the Department to determine whether additional stabilization and/or a CMS may be necessary.” and replace it with “to the Department for their evaluation.”
- page 18, para. 81(B)    Is number 5 necessary for subsurface conditions?
- page 18, para. 81(C)    Strike “may be”.
- page 18, para. 81(D)    Strike “may have been” and “could be”.
- page 18, para. 81(F)    Strike the paragraph.
- page 18, para. 81(G)    Strike the paragraph.
- page 18, para. 81(H)    Strike the paragraph.

Corrective Measures Study (CMS) Work Plan

pages 19-23, para. 83-99

Strike the entire section. This should be a separate negotiation.

- page 23, para. 101      Replace “corrective action” with “work”.
- page 24, para. 101(E)    Replace “corrective action” with “work”.
- page 24, para. 102      Strike reference to CMS.

SECTION VII - PUBLIC PARTICIPATION IN FINAL REMEDY SELECTION

- page 24, para. 105-107      Strike the entire section. This should be a separate negotiation if and when a remedy is to be selected.
- page 25, para. 109      A time frame of at least 30 days from notification should be included in this section.

page 25, para. 110 Strike “by the Department” and replace with “Modine with Department approval”.

page 25, para. 112 Strike the sentence beginning on line 4; “The Department may require that Modine perform any such additional work”. Replace with “If the Department determines that additional work is necessary, the Department will notify Modine in writing as to the nature of the additional work and the basis for its determination that the additional work is necessary. Within thirty (30) days after the receipt of such notice, Modine will have the opportunity to meet with the Department to discuss the additional work. If the parties agree as to the need for the additional work, the agreement shall be memorialized in writing and shall be considered a work plan modification in accordance with paragraph 156 of this Order.”

Add at the end of the paragraph; “If the parties are not able to agree upon the additional work, within sixty (60) days following the receipt of the Department’s Notice, Modine may dispute the Department’s determination of the need for the additional work by invoking the dispute resolution procedures under Section XVII - Dispute Resolution, of this Order.”

page 26, para. 114 Strike raw data as unnecessary or define raw data in definitions section.

page 26, para. 117 The phrase “best efforts” should be defined.

page 26, para. 118 Change “fifteen (15) days” to “fifteen (15) business days”.

page 27, para. 119 Change “corrective action” to “work”.

page 27, para. 120 Add “and Section 260.415 RSMo.” to the end of the paragraph.

page 29, para. 126 Add to the beginning of the paragraph; “Modine’s consent to issuance of this Order shall not constitute an admission by Modine of any legal or factual findings or matters set forth in this Order, or a waiver of any defenses by Modine to any legal or factual matter set forth in this Order. By signing this Order, Modine does not admit, accept or acknowledge any liability or fault with respect to the conditions at or arising from the Facility. Furthermore, except for its consent to jurisdiction in any proceeding brought by or on the behalf of the Department to enforce Modine’s obligations under this Order or collect penalties for non-compliance with the terms of this Order, by signing this Order, Modine does not waive any claim or defense that it might have raised to this Order or that it might raise in any other judicial or administrative proceeding brought by the Department.

Modine’s consent to the Department’s issuance of this Order is not to be construed and will not be construed to any extent or for any purposes, however and whenever arising, as an admission of liability or violation of any private contract or instrument or of any local, state or Federal ordinance, rule, regulation or statute, directly or indirectly, on the part of Modine. This Order shall not be admitted into evidence or used in any way, directly or indirectly, in any administrative or civil judicial proceeding as evidence of a violation of law by Modine or as an admission against Modine’s or the Department’s interests other than in further proceedings by or

on the behalf of the Department to enforce Modine's obligations under this Order or collect penalties for Modine's non-compliance with this Order."

- page 29, para. 129 Add "determination" before "or" and after "modification," in lines 1 and 4. Replace "fourteen (14) days" with "thirty (30) days". Add "or inconsistent" after "consistent" in line 6.
- page 30, para. 130 Change "fourteen (14) days" to "thirty (30) days" in the entire paragraph. Add to the end of the paragraph "The Commission will follow its normal procedures for reviewing contested matters consistent with Section 260.410 RSMo. and all other applicable Missouri laws and regulations."
- page 30, para. 131 Strike the paragraph. Should be included in the stipulated penalties section.
- page 30, para. 132 Strike the paragraph.
- page 30, para. 133 Further define "force majeure". Add at the end of the paragraph; "or any other event arising from causes beyond the control of Modine."
- page 30, para. 135 Change "forty-eight (48) hours" to seventy-two (72) hours". Change "five (5) business days" to "ten (10) business days".
- page 31, para. 139 Add to the end of the paragraph "However, all stipulated penalties which are paid by Modine may be off-set against any and all penalties for the same violation which the State may be entitled to collect as the result of other enforcement action(s)."
- page 32, para. 141 Add at the beginning of the paragraph; "Unless there has been a written modification by the Department of a compliance date, a written modification by the Department of an approved work plan condition, or excusable delay as defined in Section XVIII, Force Majeure, or a pending dispute resolution pursuant to Section XVII, if Modine fails to comply with the terms and conditions set forth in this Order in the time and manner specified herein, ...". Strike "if Modine fails to comply, with the compliance dates listed in Section VI (Work to be Performed) of this Order". All penalties should also be discussed.
- page 32, para. 143 Add to the end of the paragraph "Stipulated penalties shall not accrue for delinquent reports unless the Department has given Modine written notice that a report is considered delinquent. Modine will have until the end of the month after receipt of such notice (or ten days, whichever is greater) before any stipulated penalties begin to accrue for the delinquent report(s)."
- page 32, para. 144 Add at the end of the sentence "unless otherwise determined not to accrue pursuant to other provisions contained in this Order."
- page 32, para. 145 Add at the beginning of the paragraph; "The Department shall provide Modine with written notification of any alleged non-compliance as soon as practicable after discovery. Said notice shall specify the basis for the alleged non-compliance and any penalty allegedly accrued to date." Change "thirty (30) days" to "sixty (60) days".

page 32, para. 146     Add to the end of the paragraph “The Department may, in its sole, non-reviewable discretion, waive, suspend or reduce the amount of any stipulated penalties, or the accrual of such penalties, due under this Section based on equitable considerations.”

page 33, para. 148     Strike the paragraph.

page 33, para. 149     Strike the paragraph.

page 33, para. 150     Strike the paragraph.

page 34, para. 153     Strike the paragraph.

page 34, para. 154     Replace “is signed by the Director.” with “is received by Modine.”

page 34, para. 156     Replace “is signed by the Director.” with “is received by Modine.”